Final Regulations Ease SBC Compliance Duties

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The three federal agencies charged with implementing the Affordable Care Act (Treasury, Labor, and HHS) jointly issued final regulations on February 9, 2012 governing the content and distribution of "Summaries of Benefits and Coverage" (SBCs), sometimes called "mini-SPDs." Unlike SPDs, the SBC is distributed to persons applying for coverage, not just to current participants and beneficiaries. The final regulations include several changes that will make compliance less burdensome on employers and insurers, including a six-month extension of the original compliance deadline, from March 23, 2012 to September 23, 2012. Specifically SBCs must be made available with the first open enrollment period beginning on or after September 23, 2012, which may not be until November or December 2012 for a calendar year plan. However SBCs will also need to be provided as of September 23, 2012 for participants who join a plan outside of open enrollment, such as new hires and dependents acquired through birth or marriage under HIPAA special enrollment rules. In addition to final regulations on the SBC the agencies also published a final template SBC and model completed SBC as well as a final glossary of key terms that have standardized definitions in the SBC context.

Basic background information on the SBC is set forth in this earlier post. This post focuses on the changes made in the final regulation that apply to group, rather than individual health coverage, as follows:

• As mentioned, the compliance deadline was pushed out six months in response to public comments requesting more time to adapt to this new disclosure requirement.

• The SBC may be distributed electronically to plan applicants, including by posting online, so long as the format is readily accessible (e.g., Adobe Acrobat), and the employer/plan sponsor or insurer timely provides written or email notice to the enrollee of how to find the SBC online, and of their option to receive a hard copy free of charge. (Current plan participants may receive electronic SBCs under the same DOL rules that apply to SPDs, which differ depending on whether or not the participant regularly uses a computer as part of his or her job, or does not do so.)

• The SBC does not need to disclose health premium costs. Removing premium costs from the SBC eliminates the need to provide updated documents when premiums increase or otherwise change between the time the application is submitted, and commencement of coverage.

• The SBC does not need to be a self-standing document but may be incorporated into a Summary Plan Description (SPD) so long as it is conspicuously set apart, in its entirety, from SPD language. The preamble to the final regulations recommends placing it immediately after the table of contents for the SPD.

• Because both insurance carriers and employer plan sponsors must each provide SBCs, the final rule expands on the anti-duplication rule set forth in the proposed regulations, pursuant to which an insurer's timely provision of SBCs for an insured group health plan fulfills both its own, and the employer's, disclosure duties. Under the final regulation the insurer or employer need only provide one SBC to a participant and beneficiaries known to reside at the same address, and upon renewal of coverage with multiple benefit packages the employer or insurer need only provide a new SBC for the package that automatically is renewed; SBCs for other benefit packages need only be provided upon request.

• The SBC does not need to be provided for certain "excepted benefit" plans such as self-standing dental, vision plans, HSAs, and health Flexible Spending Accounts which are

funded solely by employee salary deferrals or which receive employer contributions not exceeding $500. Health Reimbursement Accounts (HRAs) likely will require SBCs.

- To more accurately apply to self funded plans, terms such as “policy period” have been changed to “coverage period.”
- The “coverage examples” used to illustrate in concrete terms how the plan’s deductible and cost-sharing provision apply to a specific medical situation have been reduced from three to two – childbirth (normal delivery) and well-controlled Type 2 diabetes. A third example for breast cancer treatment was dropped.
- The original 4-page limit for the SBC, which the proposed regulations interpreted as 8 pages (4 double-sided pages) has been liberalized further. Now, plan sponsors and insurers may exceed the page limitation when the plan terms “cannot reasonably be described” in the existing space limits.
- The time period in which to provide an SBC upon individual participant or beneficiary request, and on other select instances, is increased from seven calendar days to seven business days.

The final regulations, template and glossary will be published in the Federal Register on February 14, 2012.

http://www.dol.gov/ebsa/pdf/SBCtemplate.pdf
http://www.dol.gov/ebsa/pdf/SBCSampleCompleted.pdf
http://www.dol.gov/ebsa/pdf/SBCUniformGlossary.pdf
http://eforerisa.wordpress.com/2011/09/27/the-new-sbc-disclosure-rules-%e2%80%93-what-do-they-mean-for-brokers/